

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Michels Corporation,

Plaintiff,

v.

**Central States, Southeast and Southwest
Areas Pension Fund, *et al.*,**

Defendants.

Pipe Line Contractors Association,

Intervening Plaintiff,

v.

**Central States, Southeast and Southwest
Areas Pension Fund, *et al.*,**

Defendants.

**Central States, Southeast and Southwest
Areas Pension Fund, and Arthur H. Bunte,
Jr.,**

Counterclaim Plaintiffs,

v.

Michels Corporation,

Counterclaim Defendant

Case No. 12-cv-4144

Judge Norgle

MOTION FOR ENTRY OF FINAL

JUDGMENT AS TO THE PLCA

MOTION FOR ENTRY OF FINAL JUDGMENT

Defendant/Counterclaim-Plaintiff Central States Southeast and Southwest Areas Pension Fund (the “Fund”) and its Trustees Fred Gegare, Jerry Younger, George J. Westley, Charles A. Whobrey, Howard McDougall, Arthur H. Bunte, Jr., Gary F. Caldwell, and Ronald DeStefano (collectively, “Trustees”), and the Trustees (collectively the “Defendants”) hereby submit this Motion for Entry of Final Judgment as to the Pipeline Contractors Association (the “PLCA”). In support of its Motion, the Fund and its Trustees state as follows:

1. On March 15, 2012, Michels filed a Complaint against the Fund, Michels sought a declaratory judgment in its favor that it is not required to contribute to the Fund after November 15, 2011, as well as an award of attorneys’ fees and costs. (Doc. No. 1).

2. On July 26, 2012, the PLCA filed an Intervenor Complaint against Defendants. The PLCA sought a declaratory judgment in its favor that its members are not required to contribute to the Fund after November 15, 2011, as well as an award of attorneys’ fees and costs. (Doc. No. 33).

3. On August 2, 2012, the Fund and Bunte filed an Amended Counterclaim against Michels, and many other entities at least some of which that were members of the PLCA (the Counterclaim defendants other than Michels shall be referred to as the “Counterclaim Defendants”), seeking a judgment pursuant to section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), among other remedies. (Doc. No. 39).

4. On November 13, 2012, Michels filed a Motion for Summary Judgment against Defendants. (Doc. No. 136).

5. On January 11, 2013, the Defendants filed a Motion for Summary Judgment against Michels. (Doc. No. 152).

6. On September 26, 2013, the Court entered an Opinion and Order granting the Motion for Summary Judgment against Michels, and denying Michels' Motion for Summary Judgment against Defendants. (Doc. Nos. 172-173).

7. On October 21, 2014, the parties entered into a stipulation to dismiss the claims against the Counterclaim Defendants without prejudice pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure and the parties' agreement. (Doc. No. 218).

8. On October 30, 2014, the parties entered into a stipulation stating that "[t]he substance and effect of the Court's September 26, 2013 Order of summary judgment should be deemed to apply to PLCA as well as Michels." (Doc. No. 219).

9. On December 2, 2014, the Court entered a Final Judgment as to All Parties. (Doc. No. 221).

10. On December 16, 2014, PLCA filed a timely notice of appeal from the final judgments to the United States Court of Appeals for the Seventh Circuit. (Doc. No. 223).

11. On December 17, 2014, Michels filed a timely notice of appeal from the final judgments to the Seventh Circuit. (Doc. No. 227).

12. On September 2, 2015, the Seventh Circuit entered a Ruling reversing the Court's judgment in favor of the Fund. (Doc. No. 242). In part, the Ruling stated that

the [2005-2011] collective bargaining agreement between PLCA and the Union expired in accordance with its terms on January 31, 2011. Until November of that year, it was followed by a series of separate agreements, each of which carried the terms of the expired CBA forward. In November, the parties exercised their right to change the term before us now: the duty to contribute to the Fund. They properly notified the Fund in writing of this prospective change.

Ruling at 19.

13. On September 24, 2015, the Seventh Circuit issued its mandate to this Court. (Doc. No. 241).

14. On January 12, 2016 Michels and the Fund presented an Agreed Order of Judgment as to Michels pursuant to a settlement reached between the parties. A copy of the Agreed Proposed Order is attached hereto as Exhibit A.

15. Given that the PLCA is the only remaining party in the case and there being no remaining factual or legal issues in dispute as to the obligations of the members of the PLCA to contribute to the Fund after November 15, 2011 under the 2005-2011 CBA.

WHEREFORE, Central States respectfully requests that this Court:

- (i) enter summary judgment in favor of the PLCA on its claim for declaratory judgment;
- (ii) enter a final judgment in this case by issuing a declaratory judgment pursuant to 28 U.S.C. § 2201(a) that the PLCA members were not required to contribute to the Fund after November 15, 2011 under the 2005-2011 CBA;

A proposed order for the Court's consideration and usage is attached hereto as Exhibit B.

Respectfully submitted,

/s/ Timothy C. Reuter
Timothy C. Reuter (ARDC #06279373)
CENTRAL STATES FUNDS
Law Department
9377 W. Higgins Road, 10th Floor
Rosemont, IL 60018
(847) 939-2480
treuter@centralstatesfunds.org

ATTORNEY FOR CENTRAL STATES

January 19, 2016

CERTIFICATE OF SERVICE

I, Timothy C. Reuter, one of the attorneys for the Central States, Southeast and Southwest Areas Pension Fund, certify that on January 19, 2016, I electronically filed the foregoing *Motion for Entry of Final Judgment* with the Clerk of the Court using the ECF system. This filing was served on all parties indicated on the electronic filing receipt via the ECF system.

Respectfully submitted,

/s/ Timothy C. Reuter
Timothy C. Reuter (ARDC #06279373)
CENTRAL STATES FUNDS
Law Department
9377 W. Higgins Road, 10th Floor
Rosemont, IL 60018
(847) 939-2480
treuter@centralstatesfunds.org

ATTORNEY FOR CENTRAL STATES

January 19, 2016